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In the Supreme Court of the United States

OCTOBER TERM, 1954

PHILIP BART, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	3
Statement	3
Summary of argument	13
Argument	15
I. Petitioner's refusal to answer questions put to him by a subcommittee of the House Committee on Un-American Activities was with knowledge that the Committee was requiring him to answer	15
II. Petitioner was not entitled to a dismissal of the indictment because of the presence of Government employees on the grand jury, nor did his proffer entitle him to a hearing on that issue	19
III. The Committee on Un-American Activities was empowered to require petitioner to answer the questions involved here	20
A. Petitioner's failure to present his First Amendment contentions to the Committee should preclude him from urging them now	20
B. The questions which were asked petitioner were within the scope of the Committee's authority under its Resolution and the Constitution	23
1. The authority of the Committee	23
2. The questions	23
Conclusion	27

CITATIONS

Cases:

Bevan v. *Krieger*, 289 U.S. 459	21
Bowers v. *United States*, 202 F. 2d 447	21

Cases—Continued

Page

Browder v. *United States*, 312 U.S. 335..... 25
Christoffel v. *United States*, 338 U.S. 84..... 21
Emspak v. *United States*, No. 9, October Term, 1954 .....13, 14, 15, 22, 25, 26
Quinn v. *United States*, No. 8, October Term, 1954 .....13, 14, 19, 22, 25, 26
Rogers v. *United States*, 340 U.S. 367..... 22
United States v. *Bryan*, 339 U.S. 323..... 14, 21
United States v. *Fleischman*, 339 U.S. 349..... 21
Vajtauer v. *Commissioner*, 273 U.S. 103..... 21
Warszower v. *United States*, 312 U.S. 342..... 25

Constitution and Resolution:

Constitution, First Amendment.....20, 21, 22
H. Res. 5, 79th Cong., 1st Sess, 60 Stat. 828.....5, 14, 23

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OPINION BELOW

The opinion of the Court of Appeals (R. 190-206) is reported at 203 F. 2d 45. The opinions of the District Court denying petitioner's motions to dismiss the indictment (R. 161-178) are reported at 95 F. Supp. 1010, 1012.

JURISDICTION

The judgment of the Court of Appeals was entered December 19, 1952 (R. 207). A petition for

rehearing was denied on April 15, 1953 (R. 210). On May 15, 1953, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including May 25, 1953 (R. 210). A petition was filed on that date, and was granted on June 7, 1954 (R. 211). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also former Rule 37(b)(2) and Rule 45(a), F.R. Crim. P.

QUESTIONS PRESENTED

1. Whether the evidence supports the finding of the trial court, sustained by the Court of Appeals, that petitioner was aware that the grounds asserted by him as a basis for refusal to answer certain questions put to him by a subcommittee of the House Committee on Un-American Activities had been rejected by the subcommittee, and that he was expected to answer.

2. The twenty grand jurors who concurred in finding the indictment included ten government employees and two wives of government employees. The question presented is whether petitioner made a sufficient showing of bias on the part of these twelve grand jurors to entitle him to dismissal of the indictment or to a hearing on the issue.

3. Whether the questions asked petitioner fall within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and, if so, whether the Resolution, as so construed, is unconstitutional, in that (a) it exceeds the investigatory or legislative power of Congress, (b)

it is vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment.

STATUTES INVOLVED

The relevant statutes, resolutions, and rules are set out in the Brief for the United States in *Emspak* v. *United States*, No. 9, O.T., 1954, and in the Brief for the United States in *Quinn* v. *United States*, No. 8, O.T., 1954.

STATEMENT

On November 20, 1950, the petitioner, Philip Bart, was indicted by a grand jury of the United States District Court for the District of Columbia for having wilfully refused to answer thirty-two questions before a duly created subcommittee of the Committee on Un-American Activities of the House of Representatives, in violation of the provisions of 2 U.S.C. 192 (R. 108-113). He pleaded not guilty (R. 113-114), and moved to dismiss the indictment (R. 116-121).

One of the contentions made in this motion was that the indictment was invalid because ten of the twenty members of the grand jury who concurred in it were government employees, and two more were wives of government employees. As an alternative, a hearing was sought so that this bias could be shown (R. 121-126, 127-128). The motion was supported by affidavits of petitioner's counsel to the effect that, by virtue of the atmosphere created and exemplified by such matters as Executive Order 9835 (the President's Loyalty Order), and the enactment of the Internal Security Act of 1950, the

climate of opinion in Washington was such that government employees would have hesitated to vote against the return of an indictment in this case (R. 122-124, 127-138). This affidavit was in turn supported by nine newspaper clippings, some with unsigned articles, and others reflecting the unsworn and untested views of certain columnists, some of whom expressed the view that the loyalty program had adversely affected the morale of government workers (R. 139-159). The petitioner's motion on this point was denied on the ground that there had been no showing of actual bias on the part of the jurors, and no showing or offer of proof of circumstances which, either with or without the hearing sought by petitioner, would indicate that government employees would not be suitable grand jurors (R. 161-164; 95 F. Supp. 1010).

Later, on the trial of the case, the following was stipulated or shown:

The Committee of Un-American Activities was authorized, both by statute and House Resolution, to make, from time to time—

> * * * as a whole or by subcommittee * * * investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States; (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all

other questions in relation thereto that would aid Congress in any necessary remedial legislation.

60 Stat. 828; H. Res. 5, 79th Cong., 1st Sess.

Acting pursuant to this authorization, and apparently in order to obtain information as to the background and development of petitioner's career in the Communist Party (see R. 31-32, 103-104), the Committee, in June 1950, called the petitioner, who was general manager both of Freedom of the Press Co., Inc., an organization which publishes the Daily Worker, and of the Daily Worker itself (R. 15).

Petitioner was asked a number of questions, some of which he answered (R. 7-26). He refused, however, to answer some thirty-two questions, and these refusals were made the basis for his indictment. During or at the close of his trial, all except eight of the counts were dismissed (R. 28, 62). On appeal, conviction was sustained as to five counts, which are presently before this Court.

Four of the counts were based on questions related to the fact that petitioner had changed his name. They were (R. 109):

> Count 3. What was the name of the defendant when he came to the United States.
>
> Count 4. What was the defendant's father's name.
>
> Count 5. Under what name did the defendant's father become a citizen of the United States.

> Count 6. What did defendant change his name from.

The fifth question was asked after the petitioner had admitted that he was a section organizer for the Communist Party in Ohio in 1936 (R. 16). It was, as stated in Count 8 (R. 109):

> Count 8. Who were the other officials of the Ohio section of the Communist Party during the period when the defendant was organizer there.

The record shows that petitioner never answered any of these five questions. His refusal to answer the last question (Count 8) was based on a claim of possible incrimination "in accordance with Article V of the Constitution * * *" (R. 16). The colloquy, on this question, was as follows (R. 16-17).

> Mr. Tavenner: Who were the other officials of the Ohio section of the Communist Party during the period of time you were organizer there?
>
> Mr. Bart: I object to this question. I will not answer it, standing on my rights in accordance with Article V of the Constitution, and furthermore I protest because this committee has asked this question of numerous people and has infringed upon their rights as American citizens.
>
> Mr. Tavenner: I think, Mr. Bart, I should

point out that your testimony relating to other people who were associated with you at that time could not in any way incriminate you under the Fifth Amendment.

Mr. Unger: I should like to correct you, Mr. Tavenner.

Mr. Walter: You advise your client.

Mr. Tavenner: You have told us you were a section organizer for the Communist Party in Ohio, and my question now is, who were the officials who worked with you in that work, that is, officials of the Ohio section of the Communist Party?

Mr. Unger: Permit me to advise my client that Mr. Tavenner, counsel, is in error in his interpretation of the Constitution so far as the Fifth Amendment is concerned, and that Mr. Bart, the witness, is entirely correct in his interpretation of the Constitution, and has a right to assert that this committee has no right —no right, let me make it plain—

* * * * *

Mr. Unger: As he has stated in his previous answer, he is not required to testify against himself.

Mr. Bart: I stand on the advice of my counsel. I am not required to testify against myself, and in accordance with Article V of the Constitution I will not answer the question.

Mr. Tavenner: I was not asking you to testify against yourself. I was asking you to

state the names of other persons associated with you.

Mr. Bart: I consider this an attempt on the part of the committee to use this against myself as well as against others, as it has on many previous occasions.

Mr. Walter: And therefore you refuse to answer.

Mr. Bart: I refuse to answer.

With respect to the questions made the basis of counts 3, 4, 5, and 6, on the other hand, petitioner's objections were not based on the danger of incrimination, but, rather, on the impropriety of the Committee in asking the questions. These questions were asked after the Committee had first asked whether petitioner had been born under the name Philip Bart, and had been told by petitioner that he could not see what that had to do with the inquiry; and after he had also been asked when he took the name Bart, and had stated that "I don't care to discuss it," and that "I will not answer it because it is not pertinent to the hearing" (R. 8-9). The remainder of the relevant colloquy follows (R. 9, 10-12; emphasis added):

Mr. Case: *What was your name at the time you came to the United States?* [Count 3]

Mr. Bart: I have already answered this question.[1]

* * * * *

[1] This could have referred only to a previous statement that petitioner refused to answer the questions relating to his name because they were not pertinent (R. 9).

Mr. Tavenner: You are a naturalized American citizen?

Mr. Bart: Yes.

Mr. Tavenner: How did you become naturalized?

Mr. Bart: Through process of my father.

Mr. Tavenner: *What was your father's name?* [Count 4]

Mr. Bart: I have already dealt with this question.

Mr. Tavenner: When was your father naturalized?

Mr. Bart: I do not remember.

Mr. Unger: Just a minute.

(Witness confers with his counsel.)

Mr. Bart: About 30 years ago.

Mr. Tavenner: Do you refuse to tell the committee your father's name?

Mr. Unger: Mr. Tavenner, he doesn't refuse to tell the committee. He is trying to tell the committee that this line of inquiry is a highly improper one.

* * * * *

Mr. Walter: * * *

Mr. Bart, you claim citizenship by virtue of your father's citizenship; is that right?

Mr. Bart: That is right.

Mr. Walter: *Under what name did your father become a citizen of the United States?* [Count 5]

Mr. Bart: Under his own name.

Mr. Walter: What was that name?

Mr. Bart: I have already stated my reply to this question as far as I am concerned.

Mr. Walter: How can you claim citizenship by virtue of your father's citizenship if you don't know what name your father used when he became a citizen?

Mr. Unger: Mr. Chairman——

Mr. Walter: Let the witness answer the queston. You may advise your client.

Mr. Bart: I have answered I am a citizen by virtue of that fact, and that this is my legal name by which I vote and am registered and am known.

Mr. Walter: When did you legally change your name?

Mr. Bart: Many years ago.

Mr. Walter: Where?

Mr. Bart: In the city of New York.

Mr. Walter: Did you have your name changed in court?

Mr. Bart: Yes, about 15 years ago.

Mr. Unger: His answer is about 15 years ago.

Mr. Walter: I understand. *What name did you change your name from?* [Count 6]

Mr. Bart: I have already stated my reply to this question?

Mr. Harrison: I understand you refuse to answer the chairman's question?

Mr. Bart: My answer is that I have answered what my name is here, which is the

only question pertaining to the inquiry, it seems to me.

Mr. Walter: Of course all of this is a matter of public record?

Mr. Bart: Correct.

Mr. Walter: And then I suppose you know that under the law a question innocent on its face can't be arbitrarily ignored. You can't refuse to answer such a question without running the risk of the consequences.

Mr. Unger: I think, again, Mr. Chairman, Mr. Bart has indicated very plainly he has not been contumacious in any regard. He states his name has been Philip Bart for a large number of years.

Mr. Walter: Don't argue with the committee. You advise your client as you see fit.

Mr. Case: Mr. Chairman, it seems to me the witness should be advised of the possibilities of contempt when he fails to answer a question as simple and as proper as your question as to what his name was before it was changed.

Mr. Walter: No. He has counsel. Counsel knows that is the law. Proceed, Mr. Tavenner.

A report of the Committee was thereafter submitted to the House of Representatives recommending the citation of petitioner for contempt, and this report was, in course, approved by the House and certified by the Speaker to the United States At-

torney for the District of Columbia for appropriate action (R. 180).

At the conclusion of the trial, the court, sitting without a jury, found petitioner guilty (R. 106), specifically stating that (R. 105):

> The defendant clearly understood the questions in the first six counts of the indictment, and that he was being asked to answer them. He indicated that he did not consider the information sought as within the scope of the business of the committee. He comprehended that he was refusing to answer those questions.[2]

Petitioner was thereupon sentenced to imprisonment for a period of three months and to pay a fine of $500 (R. 183-184).

On appeal, the judgment was affirmed, with Judge Bazelon dissenting.[3] With respect to the issues presented by the petition for a writ of certiorari, the court held (1) by reference to the *Emspak* case, decided concurrently, that it had not been shown that the grand jury was improperly constituted, and that insufficient data had been presented to require a hearing on that issue (R. 202); and (2) that there was sufficient evidence to support the finding of the trial court that the petitioner was required to answer the questions now in issue and

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[2] The court also stated that petitioner "refused to answer" the question constituting the basis of Count 8 (R. 105).

[3] Unlike the *Emspak* and the *Quinn* cases (Nos. 9 and 8, respectively, O. T., 1954), this case was not heard by the Court of Appeals *en banc*.

that he deliberately and intentionally refused to do so (R. 203). The petitioner's present First Amendment contentions were not passed upon by the court below, since they were not raised there by the petitioner.

SUMMARY OF ARGUMENT

I

Petitioner contends that the court below should have directed his acquittal on the ground that the Committee did not specifically direct him to answer the questions here involved after he had objected to them. We have set forth in our brief in *Emspak* v. *United States*, No. 9, this Term, our view that a witness before a Congressional Committee who objects to a question must be informed that the Committee has rejected his objection and is directing him to answer, although not in any rigid form of words, before he can be punished for refusal to answer. The record in this case shows that petitioner must have understood that his objections to the Committee's questions were rejected and that the Committee was requiring him to answer the questions.

II

Petitioner was indicted by the same grand jury which returned the indictment in *Quinn* v. *United States*, No. 8, this Term. Petitioner makes the same contention, and upon the same record, with respect to the government employees serving on the grand jury, as is involved in that case. The

petitioner's contention is without merit for the reasons stated in our brief in *Quinn* v. *United States.*

III

Petitioner apparently seeks to challenge the authority of the House Committee on Un-American Activities to require him to answer the questions involved in this case for all of the reasons urged by the petitioners in *Quinn* v. *United States*, No. 8, and *Emspak* v. *United States*, No. 9, both this Term. For the reasons set forth in the government's briefs in the *Quinn* and *Emspak* cases, we submit that the Committee was authorized, consistently with the First Amendment, to require petitioner to answer the questions.

It should be noted that petitioner presented neither to the Committee nor to the court below his present contention that under the First Amendment he was entitled to refuse to answer the questions involved, and therefore should be precluded from raising such objections now. *United States* v. *Bryan*, 339 U.S. 323, 333. In any event, we submit that the Resolution creating the Committee plainly authorized the Committee to require petitioner, the general manager of the Daily Worker with a long record of organizing activity for the Communist Party, to answer questions admittedly pertinent to ascertaining the extent, character and objects of Communist propaganda activities carried on by petitioner and other persons.

ARGUMENT

I

Petitioner's Refusal to Answer Questions Put to Him by a Subcommittee of the House Committee on Un-American Activities Was With Knowledge That the Committee Was Requiring Him to Answer.

Petitioner contends that he should have been acquitted because he was never specifically directed to answer the questions in issue after he had objected to the questions. He apparently concedes (since he adopts on this point the arguments of the petitioner in *Emspak* v. *United States*, No. 9, this Term, Pet. Br. p. 190) that it is not necessary to use any particular form of words, and that the court below was right in holding that the only issue, on this aspect of the case, is whether he clearly understood that his objections were not being accepted and that he was being required to answer (Pet. Br. 8-9). He contends however that by this standard he was not adequately directed to answer.

In our brief in *Emspak* v. *United States*, No. 9, this Term, (Govt. Br. 39-43) we have set forth our view, which is that of the court below, that a witness before a Congressional committee who raises an objection to a question must in some manner be clearly advised that his objection has been rejected and that he is being required to answer. We also contend that no rigid form of words need be used to apprise the witness of this fact. Accordingly, we request the Court to consider that

portion of our brief in *Emspak* as if it were set out here.

The transcript of the hearing before the Committee makes it clear that the petitioner must have understood that his objections to the Committee's questions were regarded as unsound by the Committee, and that he was being required to answer. With respect to count 8, based on the question calling for the names of other officials in the Ohio section of the Communist Party at the time petitioner was an organizer there (Statement, *supra*, pp. 6-8), the colloquy between petitioner and the Committee clearly shows that, after petitioner's counsel had repeatedly expressed the view that petitioner was privileged to refuse to answer, the Committee was still of the view that the question had to be answered; and that petitioner, knowing this, stated specifically "I will not answer the question", and again, after being asked "and therefore you refuse to answer?", stated "I refuse to answer" (R. 17). As conviction on any count will suffice to sustain the judgment, this unequivocal refusal suffices to dispose of the case on this issue.[4]

It is also clear that petitioner understood that the Committee was requiring answers to the questions involved in counts 3 to 6, and that the Committee was not in any way accepting his objections to the pertinency of its questions. The fact

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[4] Petitioner has abandoned here his contention that he had not waived the privilege against self-incrimination with respect to this question, a contention which the court below rejected (R. 199-202).

that the Committee sought in different ways to get at the same fact, a disclosure by the petitioner of his original name, shows that the Committee was not abandoning its point, and that no reasonable person would have supposed that it was. Moreover, various members of the Committee and its staff made it clear to the petitioner during the long colloquy on this issue that they regarded petitioner's responses as refusals to answer. Thus, after the Committee's counsel, Mr. Tavenner, had asked petitioner what his father's name was (the basis of count 4) petitioner responded (R. 10):

> Mr. Bart: I have already dealt with this question.
>
> Mr. Tavenner: When was your father naturalized?
>
> Mr. Bart: I do not remember.
>
> Mr. Unger: Just a minute.
>
> (Witness confers with his counsel.)
>
> Mr. Bart: About 30 years ago.
>
> Mr. Tavenner: Do you refuse to tell the committee your father's name?
>
> Mr. Unger: Mr. Tavenner, he doesn't refuse to tell the committee. He is trying to tell the committee that this line of inquiry is a highly improper one.

A short while later, in a similar colloquy, Congressman Walter, chairman of the subcommittee, asked petitioner (R. 12) "What name did you change your name from?" (the basis for count 6). Petitioner answered "I have already stated my

reply to this question." On this occasion, Congressman Harrison then said "I understand you refuse to answer the chairman's question?", to which petitioner then responded "My answer is that I have answered what my name is here, which is the only question pertaining to the inquiry, it seems to me." (R. 12.) Petitioner's insistence that he was answering the questions, in the face of assertions by the Committee that he was refusing to answer, can only have been with the understanding that the Committee was rejecting his reasons for refusing to answer.

In addition, after petitioner had refused to answer these four questions, the Chairman of the subcommittee said:

> And then I suppose you know that under the law a question innocent on its face can't be arbitrarily ignored. You can't refuse to answer such a question without running the risk of consequences. [R. 12.]

At the same time, another member of the subcommittee stated:

> * * * it seems to me the witness should be advised of the possibilities of contempt when he fails to answer a question as simple and as proper as * * * what his name was before it was changed. [R. 12.]

While the Chairman stated that this was not necessary, as petitioner's counsel knew what the law was (R. 12), these two statements, and particularly

the Chairman's response to the latter one, must have emphasized to the petitioner the fact that the Committee had rejected his objections and regarded his replies as refusals to answer. As the Court of Appeals pointed out, these statements, standing alone, were sufficient to meet applicable legal standards and to justify the finding that the refusal to answer was deliberate and intentional, and thus to support the general verdict of guilty (R. 198). When these statements by Committee members are taken in conjunction with the full colloquy and in context, no other conclusion is possible.

II

Petitioner Was Not Entitled to a Dismissal of the Indictment Because of the Presence of Government Employees on the Grand Jury, nor Did His Proffer Entitle Him to a Hearing on that Issue

The petitioner makes the same contention, and upon the precise record, as to the presence of government employees upon the grand jury which indicted him as does the petitioner in *Quinn* v. *United States*, No. 8, this Term. The indictments in the *Quinn* case and instant case were returned by the same grand jury, and the same affidavits and supporting documents were used in both cases to attack the composition of the grand jury. Accordingly, we respectfully refer the Court to our discussion of this point in the Government's brief in *Quinn* v. *United States*, No. 8, this Term, pp. 43-70, as though it were set out fully here.

III

The Committee on Un-American Activities Was Empowered to Require Petitioner to Answer the Questions Involved Here

As noted above (Statement, pp. 5-6), petitioner was convicted on five counts arising out of his refusal to answer four questions relating to petitioner's name prior to his change of name and his father's name, and the question underlying count 8 of the indictment, "Who were the other officials of the Ohio section of the Communist Party during the period of time you were organizer there?" Petitioner contends that his conviction must be set aside on the ground that compelling him to answer those questions would violate the First Amendment (Pet. Br. pp. 16-17).

A. *PETITIONER'S FAILURE TO PRESENT HIS FIRST AMENDMENT* CONTENTIONS TO THE COMMITTEE SHOULD PRECLUDE HIM FROM URGING THEM NOW.

In the first place, in the proceedings before the Committee, petitioner justified his refusal to answer the four name questions solely on the ground that they were not pertinent;[5] he made no assertion, directly or indirectly, of First Amendment rights (R. 8-13). Petitioner's failure to express his First Amendment objections to the Committee should preclude him from later asserting them for the first time as a defense to a contempt prosecution. Thus, it has been held that the defense of lack of a com-

[5] Petitioner has abandoned the contention that these questions were not pertinent. See, *infra*, p. 26.

mittee quorum is waived by failure to assert it before the Committee (*United States* v. *Bryan*, 339 U.S. 323, 333; *United States* v. *Fleischman*, 339 U.S. 349, 352), although the contrary has been held in a perjury prosecution in which the presence of a quorum was an essential element of the offense (*Christoffel* v. *United States*, 338 U.S. 84; and see *Bowers* v. *United States*, 202 F. 2d 447 (C.A. D.C.)). In *United States* v. *Bryan*, *supra*, this Court noted (p. 332) that "courts need not treat as important that which the witness obviously regarded as unimportant," and that (p. 333) "To deny the Committee the opportunity to consider the objection or remedy it is in itself a contempt of its authority and an obstruction of its processes." Similarly, failure to assert a personal privilege before a notary taking a deposition precludes reliance on the privilege as a defense in a contempt proceeding. *Bevan* v. *Krieger*, 289 U.S. 459, 464-466. See also *Vajtauer* v. *Commissioner*, 273 U.S. 103, 113.

Moreover, petitioner did not present to the Court of Appeals any of his present contentions under the First Amendment. Under these circumstances we suggest that he is without standing now to challenge as violating the First Amendment his conviction on counts 3, 4, 5, and 6, with the result that, since he received a general sentence, his conviction should be affirmed unless it is set aside on some other ground as to each of those four counts—regardless of the disposition under the First Amendment of his conviction on count 8.

As to count 8, too, it is highly doubtful that petitioner asserted before the Committee any right derived from the First Amendment to refuse to answer the question "Who were the other officials of the Ohio section of the Communist Party during the period of time you were organizer there?" In response to that question, petitioner specifically asserted the privilege against self-incrimination (R. 16).[6] Two pages of transcript later (R. 18), he referred to both the First and Fifth Amendments to justify his refusal to answer an entirely different question. Thus, unless the later answer is carried back, it is clear that petitioner in no way presented to the Committee as an objection to the question in count 8 his present First Amendment contention.

Assuming, however, that petitioner in some way now has standing to raise First Amendment objections to his conviction, Points VI and VII of his brief (p. 17) purport to incorporate some or all of the points and arguments presented in *Quinn* v. *United States*, No. 8, and *Emspak* v. *United States*, No. 9, this Term, and we shall so treat them.

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[6] Before the Committee, the petitioner claimed the privilege against self-incrimination in response to this question (R. 16-17). However, the court below held that he had waived the privilege by his answers to prior questions (R. 10-13), citing *Rogers* v. *United States*, 340 U.S. 367, and petitioner has not presented this issue to this Court.

B. THE QUESTIONS WHICH WERE ASKED PETITIONER WERE WITHIN THE SCOPE OF THE COMMITTEE'S AUTHORITY UNDER ITS RESOLUTION AND THE CONSTITUTION

1. *The authority of the Committee.* The authority of the Committee to place under inquiry the particular matters here involved, and to subpoena witnesses in pursuance of the inquiry, derives from the House Resolution constituting the Committee on Un-American Activities, which provides, in relevant part, as follows:

> The Committee * * * is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Since the Committee did not, as in the *Emspak* and the *Quinn* cases, further narrow the inquiry to the consideration of some specific legislative proposal or propaganda activity, the propriety of the questions here must be judged solely by the Resolution itself.

2. *The questions.* Petitioner's conviction rests upon his refusal to answer five questions put to him by the House Committee on Un-American Activi-

ties after he had appeared before the Committee in response to a subpoena and had been sworn as a witness. Four of these questions asked, in substance, that he state his name prior to the time that he changed it, some fifteen years previously (R. 9-12). The fifth question asked the names of others who were officials in the Ohio section of the Communist Party in 1936, after petitioner had admitted that he had been a section organizer for the Party in Ohio at that time (R. 16-17).

At the same hearing, petitioner testified that at the time of the hearing he was general manager of Freedom of the Press Co., Inc., which publishes the Daily Worker, and also general manager of the Daily Worker (R. 15). He further testified that he had held important official positions in the Communist Party since the mid-1930's, specifically as a Party organizer in Ohio, Michigan, and Pennsylvania and other places (R. 16). Thus, the questions in issue were directed to one who had had a long career in the organizational and recruitment activities of the Communist Party, and who was currently the general manager of the Party's principal newspaper.

The questions by which the Committee sought to ascertain petitioner's name before he changed it should be read in the context of other questions of the Committee as to whether petitioner had traveled outside the continental United States since his original entry (R. 19), whether he had ever used a passport under the name of John William Fox

(R. 20-21), and whether he had recruited students to study at the Lenin Institute, in Moscow, or knew any citizens or residents of the United States who had attended the Lenin Institute, or whether he had attended the Lenin Institute (R. 25-26). The Committee obviously was aware that Communists use false names for various purposes (R. 27). And see *Browder* v. *United States*, 312 U.S. 335, 336; *Warszower* v. *United States*, 312 U.S. 342.

We have shown in the Government's brief in *Emspak* v. *United States*, No. 9, this Term, pp. 48-103, and in the Government's brief in *Quinn* v. *United States*, No. 8, this Term, pp. 70-79 that the House Committee on Un-American Activities is empowered to investigate Communist propaganda, and it is clear that the questions which petitioner refused to answer were highly pertinent to such an inquiry. Without more, the circumstance that petitioner was general manager of the Daily Worker, the Communist Party's chief propaganda organ, would justify the Committee in addressing to him a wide range of questions. Specifically, the Committee was entitled to inquire into the foreign travel and background of such a person, as well as into any training which he may have had in the Soviet Union. Similarly, it was entitled to inquire whether he had participated in arranging for other persons to be trained in propaganda activities at the Lenin Institute. And as a step in such an inquiry, as well as to assist in obtaining a complete picture of petitioner's activities in this country,

the Committee was clearly empowered to ascertain any names which petitioner had used and under which he may have carried on Communist propaganda activities.

Similarly, when the petitioner had testified that he was an organizer for the Communist Party in Ohio in 1936, the Committee could conclude that he may have been a propagandist for the Party in such realistic ways as recruiting followers for the Party's program or increasing the circulation of the Daily Worker, and that he could identify the other Communist leaders in Ohio who had then engaged in similar or related activities. Under any standard of relevance, the Committee could require petitioner to disclose the names of the "other officials of the Ohio section of the Communist Party."

In any event, petitioner does not now contend that any of the questions underlying the counts on which he was convicted lacked pertinence. In fact, during oral argument in the Court of Appeals, petitioner's counsel conceded that the "name" questions underlying counts 3, 4, 5 and 6 (R. 192, 204) were pertinent. And since they were pertinent, they were fully authorized, because, as we have shown in our *Emspak* and *Quinn* briefs, the Committee had power to undertake the investigation to which petitioner was called to testify.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals be affirmed.

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